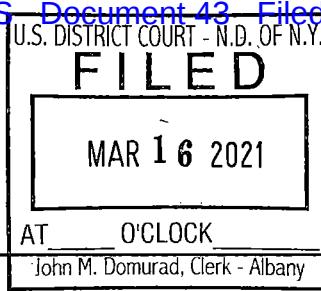


UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK**Motion:**

(Breach of Contract)

Ernestine Welch,

Plaintiff,

1:19-CV-0846

V.

OF COUNSEL:

BIO-REFERENCE LABORTORIES, INC,

PATRICK SORSBY, ESQ.

Defendant

FAEGRE DRINKER BIDDLE & REATH LLP
 Attorney for Defendant
 60 Campus Drive
 Florham Park, NJ 07932

Ernestine Welch
 P.O. Box 273
 Hudson N.Y 12534

DANIEL J. STEWARTS
 United States Magistrate Judge

MOTION: OF BREACH OF CONTRACT

Dear Daniel Stewarts:

This letter is in respond to the results of a settlement stipulation settled on November 03, 2020. A conference was held, Virtually, on November 3rd, both parties came to a settlement agreement based on the Characterized as wages. Plaintiff fully agreed to \$18,000, Less applicable withholdings and allocated attorney's fees. This agreement was placed on the record.

A follow- up Virtually hearing was held on February 16, 2021 to address Plaintiff disagreement letter address to the courts on January 4, 2021. The court states that the record states **Wages** and Severance characterized as wages. Among Severance pay there is a list of other Character of payments listed under wages like back pay, front pay, and unpaid overtime, constitutes "wages". This left the defendants to choose what best suits them.

I fully understood the elements of the agreement based on the characterized settlement of wages. December 30, 2020 was the deadline date for Plaintiff to **revoke** the settlement agreement. (see attach) Email from defendant on December 31, 2020, @8:10am. On

December 30, 2020 @8:52am I reached out to Mr. Sorsby, regarding the delivery date of checks, he responded on December 31, 2020 @ 3:40pm," I am out of the office till midweek but see below and attached" (copies of the letter, checks and stubs attached).

I was surprised that the settlement was calculated as Severance pay, with a high tax deductible of \$5,497.80 only to receive a payment for \$8,502.20. I notified counsel immediately, about my disagreement of Severance pay. (see attach) on January 1, 2021 @2:21pm.

Severance pay stipulation was not characterized in the contract agreement signed, nor was it mentioned in the conference agreement held on November 3rd. The defendants and counsel failed to notify me of this stipulation. They failed to share the breakdown of Severance pay during my revoke period. The defendant chooses to make this decision without my knowledge. Both parties failed to stipulate the facts in the contract agreement procedures agreed upon.

This motion is set for breach of contract based on # 23. Knowing and Voluntary, # 24.

Unknown facts # 25. Adequate Consideration pg. 11 of contract agreement between all parties signed on 12-23-20.

Character of payment

- **Severance pay.** Severance pay is a payment made by an employer to an employee upon the involuntary termination of employment. The right to receive severance pay and the amount of severance pay are usually based on the employee's length of service.
- **Back pay.** Back pay is compensation paid to an individual to compensate the individual for remuneration that would have been received up to the time of settlement or court award but for the employer's wrongful conduct. The back pay relates to a period when no services for the employer were performed.

Nature of claim

- **Back Pay Act (5 U.S.C. § 5596(B)).** The Back Pay Act covers employees of federal government agencies and other employees of the federal government. It is awarded to an employee who is found by the appropriate authority under applicable law, rule, regulation, or collective bargaining agreement to have been affected by a wrongful personnel action that resulted in the withdrawal or reduction of all or part of the employee's pay, allowances, or differentials.
- **Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981a.** Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, prohibits discrimination in employment based on race, color, sex, religion, and national origin, and provides for the award of back pay and attendant benefits, compensatory damages, compensation for emotional distress, and punitive damages.

Plaintiff commenced this employment discrimination action pro se on July 16, 2019. Plaintiff was wrongfully terminated by the defendants on October 01, 2018.

- **Severance pays Taxes.**

The gap pay is responsible for payroll tax, social security tax, and Medicare tax.

- **Severance pay is taxable** For federal income taxes, the amount you withhold depends on the amount of the payment. If you give a lump sum, the payment might be subject to increased income tax withholding because the payment is within a **higher tax bracket** than the employee's regular paychecks.
- **Severance pay is taxable,** withholding on severance pay includes all federal, state, and local taxes. Payroll taxes on severance pay include taxes, federal income tax (FUTA tax), Social Security tax, and Medicare tax.
- Reference: Publication 15 (Circular E), Employer's Tax Guide, and Publication 525.
- **Back pay,** Back pay is treated as taxable in the year in which it is paid – and it is taxed at the same rate as are regular wages paid in the same year.
- **Back pay,** when paying back pay, an employer must withhold the normal payroll taxes. As back pay is deemed to be a supplemental wage, withholding income. Back wages are subject to Federal taxation.
- **Separate payrolls:** a flat 22% in income taxes should be withheld.

$\$14,000 * 22\% = \3080.00 , see attach W2, Plaintiff had increase tax deductions due to Severance stipulations.

2020 Federal Income Tax Brackets and Rates, for Single Individuals

10%	up to \$9,875
12%	\$9,876 to \$40,125

× One of the most effective ways to reduce taxes on a lump sum is to reduce your gross income with a contribution to a tax-deferred retirement account. This could be either a 401(k) or an individual retirement account (IRA).

Character of the payment and nature of the claim. Whether a payment is includable in gross income and whether it is wages for purposes of employment taxes depend upon the character of the payment. *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200 (2001).

Court states that on December 31, 2020 defense counsel sent the settlement checks to Plaintiff and her Counsel. I **Object**, I received notice of checks from counsel Sorsby on December 31, 2020. I notified counsel of my disagreement of check character on 01-01-21. I submitted a letter to the court on January 4, 2021 that indicates my disagreement. Plaintiff received check in hand on January 05, 2021 from FEDEX. See attach FedEx Receipt.

November 03, 2020, settlement conference transcripts were paid for and requested by Plaintiff on March 2, 2021, and paid for on March 04, 2021, which has not been received as of March 12, 2021. I look forward to this transcript for clarification on wages characterized stated on record. (Theresa J. Casal) Court Reporter.

Transcripts from hearing held on February 16, 2021, the defendant Mr. Howitz, states on record that "for whatever reason some person internally at the company indicated severance pay" (pg. 11/13). Checks were cut under payroll pay period between 11/28/20 – 12/09/20. Defendants were aware of this character Severance pay but failed to notify Plaintiff before **Revoke Period**. Settlement contracts were signed on December 22, 2020, Severance pay were not stipulated in contract. **(unknown factors)**

CONCLUSION

CONTRACTS- Legally binding agreements between people or business entities – serve as the foundation of business as well as many social interactions. Defendants failed on the contract terms written out. Defendant's failure to perform a promise that is part of a contract.

Based on the forgoing, Plaintiff is asking the U.S. District Court to REVERSE the dismissal of Plaintiff motion for tax damages done under the characterization of Severance pay rather than agreement of wages. Defendants breach contract by failure to inform plaintiff of final settlement agreement, and to perform good faith. At this point I am asking the court to reward Plaintiff for the further damages based on Compensatory damages, Liquidated damages, and Punitive Damages based on the breach of contract, economic damages.

I am asking the court to please overturn the decision based on the evidence provided and the terms of the contract.

I Look forward to hearing from you soon, thanks for your time and attention on this matter. Any questions please feel free to contact me for any questions at the above address or at 518-772-8921.

Sincerely,


Ernestine Welch

February 12, 2021

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
ERNESTINE WELCH,

Plaintiff,

vs.

1:19-CV-846

BIO-REFERENCE LABORTORIES, INC.,

Defendant.

-----x

Transcript of a Video Status Conference held on
February 16, 2021, the HONORABLE DANIEL J. STEWART,
United States Magistrate Judge, Presiding.

A P P E A R A N C E S

(By Video)

For Plaintiff: PATRICK SORSBY, ESQ.
Attorney at Law
1568 Central Avenue, 1st Floor
Albany, New York 12205

For Defendant: FAEGRE, DRINKER, BIDDLE & REATH, LLP
Attorneys at Law
600 Campus Drive
Florham Park, New Jersey 07932
BY: WILLIAM HORWITZ, ESQ.

Also Present: PLAINTIFF ERNESTINE WELCH

*Jodi L. Hibbard, RPR, CSR, CRR
Official United States Court Reporter
100 South Clinton Street
Syracuse, New York 13261-7367
(315) 234-8547*

1 (All present by Teams Video, 11:01 a.m.)

2 THE CLERK: We are now on the record, Tuesday,
3 February 16th, 2021, 11:01 a.m. The case is Ernestine Welch
4 versus Bio-Reference Laboratories, Inc., Case Number
5 19-CV-846. Beginning with plaintiff, please state your
6 appearances for the record.

7 THE PLAINTIFF: My name is Ernestine Welch.

8 THE CLERK: Okay. And Counsel?

9 MR. SORSBY: Attorney Patrick Sorsby.

10 MR. HORWITZ: Good morning, this is William Horwitz
11 of Faegre, Drinker, Biddle & Reath on behalf of defendant
12 Bio-Reference Laboratories, Inc.

13 THE COURT: Okay, all right, well, good morning,
14 everyone, we're here on the record in this Teams call.
15 Ernestine, are you able to see me at all, are you just
16 dialing in by phone?

17 THE PLAINTIFF: I'm dialing in by phone, I'm able
18 to see you, though, you're not able to see me at all.

19 THE COURT: I cannot see you but I can hear you
20 crystal clear so for what I'm doing, that's good enough.
21 Just bear in mind that we do have a court reporter who's on
22 the line so I just tell everybody to make sure that
23 everyone's finished before they start speaking, that way we
24 don't have multiple people speaking at once.

25 So for the purposes of this conference this morning

1 is that after this matter was settled, I received a letter
2 from plaintiff Ernestine Welch with regard to certain
3 withholdings that were taken out of her check that reduced
4 the check substantially and she had a concern with regard to
5 that.

6 In the interim, Judge Sannes, who's the District
7 Court judge on this matter, approved the settlement and the
8 matter was resolved, but Judge Sannes has indicated to me
9 that she wanted me to hold this conference to further clarify
10 or explain, if necessary, exactly what went on.

11 So Ms. Welch, let me just start with you if I
12 might. I read your letter that you sent to me and I
13 appreciate it. I understand obviously you had an expectation
14 as to what the amount was going to be, it was substantially
15 less because there were numerous withholdings that were
16 taken. Is it my understanding, would I be correct that
17 nevertheless, you did in fact cash the check, is that right?

18 THE PLAINTIFF: Yes.

19 THE COURT: Okay. And I know that your counsel
20 Mr. Sorsby also received a separate amount for his fees and
21 that's been cashed as well, and then there was also -- we
22 went over some issues at the conference that I held, and I
23 did reach back and ask the court reporter to provide me a
24 transcript of that proceeding just so I was sure that we
25 discussed this issue, and so I was provided with a copy of

1 that. And Mr. Horwitz during that conference indicated that
2 Bio-Reference agrees to pay Ms. Welch the specific amount of
3 the settlement in a gross amount of \$18,000, it will be less
4 withholding as W-2 wages, and some portion of that, which
5 Mr. Sorsby can let me know, will go toward attorney's fees.
6 So this issue was discussed at the conference. Ms. Welch,
7 what is it that you wish me to do at this point in time?

8 THE PLAINTIFF: Well, it was -- it was never my
9 understanding that it would be under severance pay, it was
10 never written out in the settlement agreement and it wasn't
11 spelled out in the hearing that I'm aware of that it was
12 gonna go under severance pay, and severance pay to me is
13 based on years of service, age, and the title of your job, so
14 therefore, I don't feel like I received severance pay, and
15 the tax bracket for this lump sum under severance pay, I was
16 never given the opportunity on the taxes of whether, how I
17 wanted that to be split up and wasn't aware of how the
18 breakdown was for the severance pay.

19 THE COURT: Okay. Have you filed your taxes yet
20 this year?

21 THE PLAINTIFF: They are in the hands of -- I am in
22 the process of doing that, yes.

23 THE COURT: Okay. I mean, I don't know whether or
24 not -- don't get me wrong, I'm not giving tax advice to
25 anyone here, but you know, as far as if you feel that you're

1 entitled to a refund, you should talk to your accountant or
2 your tax preparer with regard to that particular issue. But
3 your claim was always one that I understood and I believe the
4 way the defendants understood as that of lost wages, that you
5 were prevented from working at the facility you feel
6 improperly, so it was a lost wage claim. And in any case
7 that I'm involved in, that involves lost wages, separate and
8 apart from say like a physical injury which would not be
9 taxable, any settlement in that case is going to be taxable.
10 So your responsibility to pay taxes is specific, it's nothing
11 I can do anything about and it's nothing the defendants can
12 do anything about.

13 THE PLAINTIFF: Right, and I totally understand
14 that, I was aware that I had to pay taxes on it. I just
15 thought that I was going to get the amount that I was
16 entitled to and a tax form where I would file my taxes all
17 together. I wasn't aware of the breakdown that was gonna
18 happen and that it would be under severance pay because that
19 was not written out or told to me at any point, in the
20 settlement agreement or through my attorney. It was just
21 based on less applicable, I was never told what it was going
22 to be less applicable for.

23 THE COURT: Mr. Horwitz, just for the record, you
24 want to just respond?

25 MR. HORWITZ: Um, I mean, your Honor, it was as

1 your Honor indicated, it was mentioned during the settlement
2 conference that it would be less applicable withholding,
3 the -- she's already deposited the money or cashed the check.
4 The settlement agreement indicated twice that the payment was
5 going to be less applicable withholding, she had 21 days to
6 review the settlement agreement before signing it, she signed
7 the agreement, the agreement contained all sorts of
8 protections to make sure where she confirmed she carefully
9 read and understood its terms, which would mean that she
10 understood that it was subject to withholding.

11 It sounds like she's more raising an issue about
12 how much withholding there was, which I'm also not -- I'm not
13 a tax lawyer, so I'm not sure how that works, but it's clear
14 from the pay stub that it was -- the money that was taken out
15 was taken out for taxes, and as your Honor indicated -- well,
16 at least my understanding is is that to the extent that she
17 overpaid on her taxes, she should be getting a refund. And
18 I'm not sure that would have been any different if -- had she
19 gotten this payment without taxes and she then had to pay the
20 taxes separately, I'm not sure the numbers would have come
21 out any differently, but I do know that the company paid her
22 the way it was legally obligated to pay her. And she in fact
23 filled out a W-4 form in connection with the settlement that
24 said employee's withholding certificate, complete W-4 so that
25 your employer can withhold the correct federal income tax

1 from your pay.

2 So she clearly knew and, you know, it's unfortunate
3 that she feels the way that she feels but we did comply with
4 the agreement as it was worked out in court and amended to
5 paper.

6 THE PLAINTIFF: Well, I didn't know it was going to
7 be severance pay, that's my issue, nobody told me it was
8 going to be filed under severance pay. And as far as
9 settlement lump sum, there is a tax bracket where it's, you
10 know, 10,000 -- 10 percent, 20 percent, 30 percent, what
11 percentage was that taken out? Because that was way over
12 30 percent.

13 THE COURT: So it's really, Ernestine, just so I'm
14 clear, it looks to be, so what you're saying is, you know, I
15 mean obviously you're not happy but you understand that taxes
16 are inevitably your responsibility, you --

17 THE PLAINTIFF: Yes.

18 THE COURT: You just think it was taken out
19 obviously --

20 THE PLAINTIFF: Severance pay, under severance pay.

21 THE COURT: I'm sorry, I didn't mean to cut you
22 off. So you're saying because it was referenced as severance
23 pay, whatever that might mean, it was at a higher withholding
24 rate than if it were just wages, is that correct?

25 THE PLAINTIFF: Right.

1 THE COURT: And have you -- so really that becomes
2 an issue of you filing, requesting a refund from the federal
3 government, I mean they're the ones that have your money at
4 this point in time.

5 THE PLAINTIFF: Well, my thing is if it wasn't
6 written in the contract that it was severance pay, I mean I
7 was never aware that it was gonna be under severance pay and
8 if it was under severance pay then I was supposed to be
9 contacted of how I would like those taxes to be taken out.
10 And I should have had a right to be, you know, for the taxes
11 to go over in my retirement plan or something like that, that
12 I wouldn't get taxed so hard. I was not aware of that.
13 Mr. Sorsby sent me the W-2 forms and told me to fill out
14 those forms -- or W-4, which one it is, in regards to filling
15 those forms out and getting them back to me as soon as
16 possible, that payroll needed these forms to cut the checks.
17 So I thought if I didn't fill out the form, the checks
18 wouldn't get cut. I wasn't aware of the tax liability that I
19 was gonna be against at this point.

20 THE COURT: Well, what was your anticipation as to
21 the amount of money that would be withheld?

22 THE PLAINTIFF: 2800, 20 percent.

23 THE COURT: Okay. All right. Well, it -- I will
24 consider this issue further but it seems to me that the fact
25 of the withholding was explained at the settlement

1 conference.

2 THE PLAINTIFF: As less applicable, it wasn't
3 explained as severance pay, it wasn't explained what they was
4 going to file it under.

5 THE COURT: No, I understand what you're saying as
6 far as the withholding, just saying the issue of the
7 withholding and that these were wages was explained at the
8 conference and it was also included in the settlement
9 agreement. The settlement agreement was signed, the checks
10 have been cashed, insofar as there was a withholding that was
11 more than should have been withheld, the remedy in that case
12 would be to file for a refund.

13 Mr. Sorsby, do you have anything you want to add at
14 this point in time?

15 MR. SORSBY: I think that Ms. Welch has already
16 indicated she understands that taxes are to be paid and she's
17 liable for that and she seems to indicate she understands
18 that taxes would be withheld. I think her issue is that, and
19 I'm not an accountant just like everybody else here, I think
20 she's concerned, and I don't want to speak for her, she can
21 elaborate, that the way the stub reads as a severance, it
22 says severance instead of a settlement, I think maybe perhaps
23 her concern is that, does that change the ultimate tax
24 liability in a negative way because of the way it's
25 characterized.

1 I will say in reading the case law in the tax
2 court, in regards to settlements involving discrimination
3 cases like this, the tax court is not very generous in
4 recharacterizing how settlements are considered. They will
5 consider a good portion of the settlement as wages, and if a
6 settlement tries to get cute and characterizes it as
7 something other than wages, at least the majority of it, they
8 will recharacterize it and the plaintiff will face severe
9 consequences. So I don't know if characterizing the check
10 that she received as a severance has a negative tax
11 implication, but she is correct in that it did not say that
12 in the settlement agreement. But it might mean nothing. I
13 don't know if just putting that on a pay stub has any
14 significance. I don't know. I'm not an accountant, so
15 that's my -- that's the only concern that I can see that
16 Ms. Welch is presenting here today.

17 THE COURT: Okay. And Ms. Welch, you haven't heard
18 back from your tax advisor, your accountant, with regard to
19 if you're entitled to a refund because of the withholdings,
20 correct?

21 THE PLAINTIFF: Correct.

22 THE COURT: So it may be a nonissue. But it seems
23 to me, and my understanding and my determination would be
24 that there was an agreement in place to appropriately settle
25 the case, and you know, insofar as there has allegedly been a

1 breach of the agreement, that's a separate matter, it's not
2 necessarily before the court, but I will review
3 Ms. Ernestine's argument here and make a recommendation to
4 Judge Sannes since she's the District Court judge and the one
5 who's in fact closed out the case.

6 Ms. Welch, is there anything further you want to
7 tell me about while we're all together on this conference?

8 THE PLAINTIFF: No, Mr. Sorsby's spelled it out
9 exactly my thoughts of the case. It wasn't, I wasn't aware
10 of it was going to be settled under severance pay and that I
11 was gonna be hit with that liability, the tax liability that
12 I was, and I think that if it was under wages or something
13 else, maybe I wouldn't have that huge tax liability. That
14 was not spelled out to me and that's my argument.

15 THE COURT: Okay. All right. All right,
16 Mr. Horwitz, anything further before we end?

17 MR. HORWITZ: Just very quickly, your Honor. And
18 so I understand that Ms. Welch is referring to the word on
19 the earning statement she got with her settlement payment, it
20 says severance. That was, for whatever reason some person
21 internally at the company indicated severance, but I'm not
22 aware of any reason why that would -- why the tax liability
23 would be different. That being said, to the extent she
24 explains to her tax advisor that this was wages, this should
25 be taxed at the rate of wages, I don't think there's going to

1 be -- there shouldn't be any problem. Certainly if we
2 were -- if the company or I were ever contacted, we would of
3 course take the position that this was exactly what everybody
4 seems to agree that it was, which was wages.

5 THE COURT: Okay.

6 THE PLAINTIFF: Well, because it was -- I'm sorry,
7 because it was under severance pay and it was the end of the
8 year, it was considered my yearly income, and that's why
9 there was a large tax liability on it.

10 THE COURT: Okay. All right. Well, let me
11 consider this further, I'll issue either a written order or a
12 text order with regard to that but I appreciate everyone
13 coming on and explaining to me this more fully, all right?

14 THE PLAINTIFF: Okay, thank you.

15 THE COURT: Thank you.

16 MR. HORWITZ: Thank you, your Honor.

17 MR. SORSBY: Thank you, your Honor.

18 (Proceedings Adjourned, 11:17 a.m.)

19

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1

2 CERTIFICATE OF OFFICIAL REPORTER

3

4

5 I, JODI L. HIBBARD, RPR, CRR, CSR, Federal
6 Official Realtime Court Reporter, in and for the
7 United States District Court for the Northern
8 District of New York, DO HEREBY CERTIFY that
9 pursuant to Section 753, Title 28, United States
10 Code, that the foregoing is a true and correct
11 transcript of the stenographically reported
12 proceedings held in the above-entitled matter and
13 that the transcript page format is in conformance
14 with the regulations of the Judicial Conference of
15 the United States.

16

17

Dated this 10th day of March, 2021.

18

19

20

/S/ JODI L. HIBBARD

21

JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter

22

23

24

25

JODI L. HIBBARD, RPR, CRR, CSR
(315) 234-8547

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FAGRE DRINKER BIDDLE & REATH
600 CAMPUS DRIVE
FLORHAM PARK, NJ 07932
UNITED STATES US

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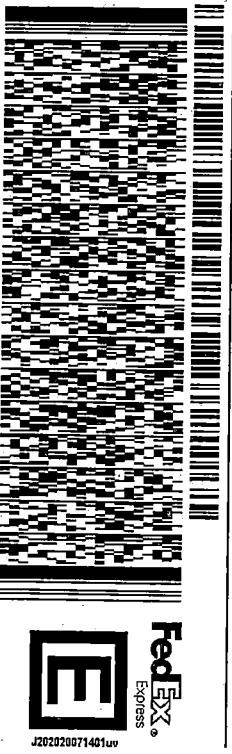
TO MS. ERNESTINE WELCH

1447 COUNTY ROUTE 19

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ELIZAVILLE NY 12523
(973) 549-7142
REF:22092-585388
NY
PO.

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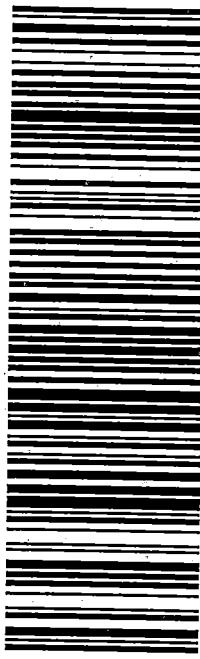


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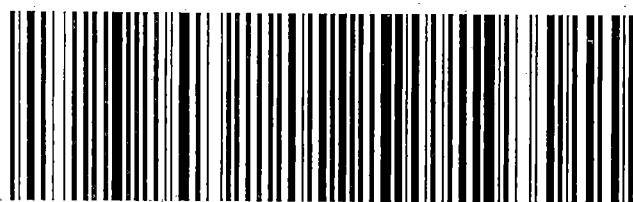
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TUE - 05 JAN 4:30P
PRIORITY OVERNIGHT

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12523
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EI DSVA



**AGREEMENT MEMORIALIZING CONFIDENTIALITY
AND NON-DISPARAGEMENT PREFERENCES**

This Agreement Memorializing Confidentiality and Non-Disparagement Preferences (“Confidentiality Agreement”) is made and entered into by and between ERNESTINE NICOLE WELCH (“WELCH”) and BIOPREFERENCE LABORATORIES, INC. (“BIOPREFERENCE”). In this Confidentiality Agreement, WELCH and BIOPREFERENCE may each be referred to as a “Party” and collectively as the “Parties.”

WHEREAS, WELCH is a former BIOPREFERENCE employee;

WHEREAS, a dispute between the Parties has arisen from BIOPREFERENCE’s employment of WELCH, which dispute is the subject of a lawsuit pending in the United States District Court for the Northern District of New York titled Ernestine Welch v. Bio-Reference Laboratories Inc., Civil Action No. 1:19-cv-00846-BKS-DJS (the “Action”);

WHEREAS, BIOPREFERENCE denies that it violated any law or took any unlawful or inappropriate action toward WELCH or with regard to her employment or the termination of her employment, or that she was otherwise subjected to harassment, discrimination or retaliation, as alleged in the Amended Complaint filed in the Action;

WHEREAS, WELCH and BIOPREFERENCE have negotiated a resolution of the Action and they intend to memorialize the terms of the resolution in a Settlement Agreement and General Release (the “Settlement Agreement”);

WHEREAS, it is WELCH’s preference that, in connection with the resolution of the Action, the parties maintain confidentiality regarding the facts and circumstances underlying the Action;

WHEREAS, it is WELCH’s preference that, in connection with the resolution of the Action, the parties agree to mutual non-disparagement provisions; and

WHEREAS, the purpose of this Confidentiality Agreement is, in accordance with Section 5003-B of the New York Civil Practice Law and Rules and Section 5-336 of the New York State General Obligations Law, to memorialize WELCH’s preference for confidentiality and non-disparagement to the fullest extent permitted by law.

NOW, THEREFORE, in consideration of the mutual promises contained in this Confidentiality Agreement, the adequacy of which consideration WELCH and BIOPREFERENCE each acknowledges, and intending to be legally bound, WELCH and BIOPREFERENCE agree as follows:

1. **WELCH’s Preference.** It is WELCH’s preference to include the following provisions, in substance, in the Settlement Agreement:

- a. **Confidentiality.** Except as otherwise provided in Section 1(c) or by applicable law, WELCH and BIOPREFERENCE agree that they will not, directly or indirectly, disclose the facts and circumstances underlying the Action in any manner including, but not limited to, in casual conversation or correspondence, on Internet websites, through social media or via any media outlet or organization. WELCH and BIOPREFERENCE agree that this Confidentiality Agreement bars both anonymous and attributed reporting and prohibits referral to the Action's docket by any Party or his, her or its attorneys or anyone else associated with those attorneys (including the attorneys' law firms).
- b. **Mutual Non-Disparagement.**
 - i. **Non-Disparagement of WELCH by BIOPREFERENCE.** Except as otherwise provided in Section 1(c) or by applicable law, BIOPREFERENCE will make good faith efforts to ensure that members of its executive management who have knowledge of WELCH's allegations will not communicate or publish, directly or indirectly, any disparaging comments or information about WELCH to any third party (other than financial, legal and business advisors).
 - ii. **Non-Disparagement of BIOPREFERENCE by WELCH.** Except as otherwise provided in Section 1(c) or by applicable law, WELCH agrees that she will not, directly or indirectly, through any medium including, but not limited to, the press, Internet or any other form of communication, disparage, defame, or otherwise damage or assail the reputation, integrity or professionalism of BIOPREFERENCE or OPKO Health, Inc., including, but not limited to, their officers, employees or shareholders.
- c. **Exceptions.** Nothing prevents WELCH from reporting possible violations of law to a governmental agency or entity. WELCH is not required to inform BIOPREFERENCE regarding any such report. Nothing prevents WELCH from disclosing the facts and circumstances underlying the Action to her spouse, provided that her spouse agrees to treat such information confidentially in compliance with the requirements set forth in Section 1 and that a disclosure by her spouse shall constitute a disclosure by WELCH in violation of this Confidentiality Agreement. Nothing in Section 1(a) is intended to prohibit WELCH from disclosing facts and circumstances underlying the Action to the limited extent necessary to file and pursue legal claims against the New York State Department of Corrections and Community Supervision. Nothing prevents BIOPREFERENCE from disclosing the facts and circumstances underlying the Action internally, for business purposes or as may otherwise be required pursuant to corporate reporting requirements.

d. **Remedies.** Confidentiality and non-disparagement will be material terms of the Settlement Agreement. In the event of a breach of those provisions, the aggrieved party will be entitled to injunctive relief without posting a bond and any other relief available under law or equity. In the event of a breach of the confidentiality or non-disparagement provisions of the Settlement Agreement, the prevailing party shall recover reasonable attorneys' fees.

2. **Review Period.** WELCH acknowledges that she has **twenty-one (21) calendar days** to consider the terms of this Confidentiality Agreement, which she may not waive. Accordingly, this Confidentiality Agreement will not take effect unless WELCH signs it on or after the twenty-first calendar day on which she receives it.

3. **Confidentiality Agreement Not to be Considered or Used as Evidence.** The Parties agree that this Confidentiality Agreement shall not be offered, used or considered as evidence in any proceeding of any type against or involving WELCH or BIOPREFERENCE, except to the extent necessary to enforce the terms of the Confidentiality Agreement or the Settlement Agreement or as otherwise required by law.

4. **Counterparts; Scanned Signatures.** This Confidentiality Agreement may be executed in any number of counterparts, or in different counterparts, any of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A facsimile or electronically scanned signature on this Confidentiality Agreement shall have the same force and effect as an original signature.

5. **Severability and Court Modification.** If any portion of this Confidentiality Agreement is determined to be illegal, unenforceable, or ineffective in a legal forum of competent jurisdiction, the Parties agree that the remaining provisions of this Confidentiality Agreement not declared invalid will continue in full force and effect.

6. **Entire Agreement.** This Confidentiality Agreement may not be modified or amended except through a written document executed by the Parties. This Confidentiality Agreement sets forth the entire agreement between the Parties, and fully supersedes any and all prior agreements or understandings between them pertaining to the same subject matter. Notwithstanding any other provision of this Confidentiality Agreement, this Confidentiality Agreement does not supersede the "Settlement Agreement and General Release" between WELCH and BIOPREFERENCE.

BY SIGNING THIS AGREEMENT, ERNESTINE NICOLE WELCH ACKNOWLEDGES THAT SHE DOES SO VOLUNTARILY AFTER CAREFULLY READING AND FULLY UNDERSTANDING EACH PROVISION AND ALL OF THE EFFECTS OF THIS AGREEMENT, AND CONSULTING WITH HER COUNSEL. SHE FURTHER AGREES THAT IT IS HER PREFERENCE TO INCLUDE THE CONFIDENTIALITY AND NON-DISPARAGEMENT PROVISIONS OF THIS AGREEMENT IN A SETTLEMENT AGREEMENT WITH BIOPREFERENCE.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed the foregoing Agreement Memorializing Confidentiality and Non-Disparagement Preferences on the dates indicated below.

DATE: _____

By: _____
ERNESTINE NICOLE WELCH

BIOREFERENCE LABORATORIES, INC.

DATE: _____

By: _____
Name:
Title:

CO FILE DEPT CLOCK CHK NO
BXV 107684 00129 MAI 0000000421

BIO-REFERENCE LABORATORIES, INC.
481 EDWARD H. ROSS DRIVE
ELMWOOD PARK, NJ 07407

Filing Status: Single

Social Security Number: XXX-XX-8664

Earnings	Rate	Hours	This Period	Year to Date
SEVERANCE		0.00	14,000.00	14,000.00
	Gross Pay	\$	14,000.00	14,000.00
Deductions	Statutory			
	Federal Income Tax	3,080.00	-	3,080.00
	Social Security Tax	868.00	-	868.00
	Medicare Tax	203.00	-	203.00
	NY State Income Tax	1,346.80	-	1,346.80
	Net Pay	\$	8,502.20	
	Net Check	\$	8,502.20	

Earnings Statement

Period Beginning: 11/28/2020
Period Ending: 12/11/2020
Pay Date: 12/09/2020

ERNESTINE N WELCH
PO BOX 273
HUDSON, NY 12534

Important Notes

Other Benefits and Information	This Period	Year to Date
--------------------------------	-------------	--------------

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER. THE BACK OF THIS DOCUMENT IS WHITE. PAYROLL CHECK NUMBER 0000000421 IS HOLD OF 76000125 TO VIEW

BIO-REFERENCE LABORATORIES, INC.
481 EDWARD H. ROSS DRIVE
ELMWOOD PARK, NJ 07407

Payroll Check Number 0000000421 is hold of 76000125 to view

Pay Date: 12/09/2020
Employee ID: 107684

000421

1-2/210

Pay to the
order of **ERNESTINE N WELCH**
This Amount: **EIGHT THOUSAND FIVE HUNDRED TWO AND 20/100 DOLLARS**

\$ 8,502.20

*** VOID AFTER 90 DAYS***

JPMORGAN CHASE BANK, N.A.
NEW YORK, NY



AUTHORIZED SIGNATURE

10000421 1021000021

48635285

INVOICE NO.	INVOICE DATE	VOUCHER	AMOUNT	DISCOUNT	TOTAL PAYMENT
120720	12/07/2020	1140918	4,000.00	0.000	4,000.00

Check Total	4,000.00
-------------	----------

113023

BIO-REFERENCE LABORATORIES, INC.

481 EDWARD H ROSS DRIVE
ELMWOOD PARK, NEW JERSEY 07407

CHASE

JPMorgan Chase Bank, N.A.
Syracuse, New York

50-937/213

12/09/2020

\$4,000.00

Four thousand Dollars

PAY
TO THE
ORDER
OF

The Law Office of Patrick Sorsby PLLC
1568 Central Avenue
Albany NY 12205

DATE AMOUNT

VOID AFTER 90 DAYS

AUTHORIZED SIGNATURE

113023 10213093790

48635261510

Mail body: Fwd: Welch - Settlement - confidential

----- Forwarded message -----

From: Ernestine Welch workout <ernwelh@gmail.com>
Date: Fri, Jan 1, 2021, 2:58 PM
Subject: Re: Welch - Settlement - confidential
To: Patrick Sorsby Esq. <sorsbylaw@gmail.com>

This matter will be taken up

In court, I am no longer an employee of this company as of 2018, my settlement check should have been issued to me the same way your check was issued to you, I was not aware they were going to take taxes out, this was my right to file taxes on this settlement along with my other yearly income. I am pissed and will look into filing suit, not happy with this outcome. I didn't agree to Severance pay

On Fri, Jan 1, 2021 at 2:21 PM Ernestine Welch workout <ernwelh@gmail.com> wrote:

Morning Patrick I am not happy, why does this say severance pay? why they didn't allow me to file my own taxes on the money myself?

On Thu, Dec 31, 2020 at 3:40 PM Patrick Sorsby Esq. <sorsbylaw@gmail.com> wrote:

I am out of the office till midweek but see below and attached.

----- Forwarded message -----

From: Horwitz, William R. <william.horwitz@faegredrinker.com>
Date: Thu, Dec 31, 2020 at 3:33 PM
Subject: Welch - Settlement - confidential
To: Patrick Sorsby Esq. <sorsbylaw@gmail.com>

CONFIDENTIAL SETTLEMENT COMMUNICATION

Patrick,

We sent out the settlement payments today via FedEx to Ms. Welch and you. Copies of the letters, checks and stubs are attached.

Best wishes for the New Year.

Bill

William R. Horwitz

william.horwitz@faegredrinker.com
+1 973 549 7142 direct / +1 973 360 9831 fax

Faegre Drinker Biddle & Reath LLP

600 Campus Drive
Florham Park, New Jersey 07932 USA
www.faegredrinker.com
1177 Avenue of the Americas, 41st Floor
New York, New York 10036 USA
+1 212 248 3140 direct / +1 212 248 3141 fax

by reply email and destroy all copies of the original message and any attachments.

--
Patrick Sorsby, Esq.

Law Office of Patrick Sorsby PLLC

1568 Central Avenue FL 1

Albany NY 12205

518-456-4LAW (tel)

518-452-4529 (fax)

e-mail: sorsbylaw@gmail.com

www.sorsbylaw.com

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Federal Tax Disclosure and Confidentiality Notice:

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Mail body: Fwd: Welch - Settlement - confidential

----- Forwarded message -----

From: **Ernestine Welch workout** <ernwelh@gmail.com>
Date: Thu, Mar 4, 2021, 11:45 AM
Subject: Fwd: Welch - Settlement - confidential
To: <staples@printme.com>

----- Forwarded message -----

From: **Ernestine Welch workout** <ernwelh@gmail.com>
Date: Fri, Jan 1, 2021, 2:21 PM
Subject: Re: Welch - Settlement - confidential
To: Patrick Sorsby Esq. <sorsbylaw@gmail.com>

Morning Patrick I am not happy, why does this say severance pay? why they didn't allow me to file my owe taxes on the money myself?

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I am out of the office till midweek but see below and attached.

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Date: Thu, Dec 31, 2020 at 3:33 PM
Subject: Welch - Settlement - confidential
To: Patrick Sorsby Esq. <sorsbylaw@gmail.com>

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Bill

William R. Horwitz

william.horwitz@faegredrinker.com
+1 973 549 7142 direct / +1 973 360 9831 fax

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600 Campus Drive
Florham Park, New Jersey 07932 USA

1177 Avenue of the Americas, 41st Floor
New York, New York 10036 USA
+1 212 248,3140 direct / +1 212 248 3141 fax

Mail body: Fwd: Welch - Settlement - confidential

----- Forwarded message -----

From: [Ernestine Welchworkout](mailto:Ernestine.Welchworkout@gmail.com) <ernwelh@gmail.com>
Date: Fri, Jan 1, 2021, 2:21 PM
Subject: Re: Welch - Settlement - confidential
To: Patrick Sorsby Esq. <sorsbylaw@gmail.com>

Morning Patrick I am not happy, why does this say severance pay? why they didn't allow me to file my owe taxes on the money myself?

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Subject: Welch - Settlement - confidential
To: Patrick Sorsby Esq. <sorsbylaw@gmail.com>

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Best wishes for the New Year.

Bill

William R. Horwitz

william.horwitz@faegredrinker.com
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--

Mail body: Fwd: checks

----- Forwarded message -----

From: Patrick Sorsby Esq. <sorsbylaw@gmail.com>

Date: Thu, Dec 31, 2020, 8:10 AM

Subject: checks

To: Ernestine Welch workout <ernwelh@gmail.com>

~~See below... checks are going out today,~~

~~Wed, Dec 30, 10:40 AM (21 hours ago)~~

Horwitz, William R.

to me

CONFIDENTIAL SETTLEMENT COMMUNICATION

Patrick,

Assuming that Ms. Welch doesn't revoke today, I'll send out the settlement checks tomorrow by FedEx. They should be delivered by January 4 at the latest. I'll also send you the fully executed Settlement Agreement.

--
Patrick Sorsby, Esq.

Law Office of Patrick Sorsby PLLC

1568 Central Avenue FL 1

Albany NY 12205

518-456-4LAW (tel)

518-452-4529 (fax)

e-mail: sorsbylaw@gmail.com

www.sorsbylaw.com

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Mail body: Fwd: Documents to get back to me ASAP

----- Forwarded message -----

From: Patrick Sorsby Esq. <sorsbylaw@gmail.com>
Date: Thu, Dec 3, 2020, 12:39 PM
Subject: Documents to get back to me ASAP
To: Ernestine Welch workout <ernwelh@gmail.com>

Ernestine,

Please complete and email back to me the attached tax docs. They need these ASAP to get the payroll department processing the checks.

--
Patrick Sorsby, Esq.

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1568 Central Avenue FL 1
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518-456-4LAW (tel)
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Mail body: Fwd: Check

----- Forwarded message -----

From: Ernestine Welch workout <ernwelh@gmail.com>
Date: Wed, Dec 30, 2020, 8:52 AM
Subject: Re: Check
To: Patrick Sorsby Esq. <sorsbylaw@gmail.com>

Good morning Patrick, just checking in on when should I expect delivery of check today or tomorrow? Also I never received copies of the settlement

On Wed, Dec 30, 2020 at 12:19 PM Patrick Sorsby Esq. <sorsbylaw@gmail.com> wrote:
Are you on your way?

On Tue, Dec 22, 2020 at 8:08 PM Ernestine Welch workout <ernwelh@gmail.com> wrote:
Ok see you by 12noon tomorrow, got my grandkids for the Holiday, this is why I'm saying by noon, so I can feed them and drop them off to family ok

On Tue, Dec 22, 2020 at 6:10 PM Patrick Sorsby Esq. <sorsbylaw@gmail.com> wrote:
I am available tomorrow morning between 10 and 1 to pick up your file and sing the docs.

On Mon, Dec 14, 2020 at 3:01 PM Ernestine Welch workout <ernwelh@gmail.com> wrote:
Ernestine Welch, 1447 County Rt 19 Elizaville ny 12523

On Mon, Dec 14, 2020 at 12:03 PM Patrick Sorsby Esq. <sorsbylaw@gmail.com> wrote:
Ernestine,

See below we need a different check delivery address:

"We can send Ms. Welch's check directly to her, but FedEx won't deliver to a Post Office box. "

--
Patrick Sorsby, Esq.

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1568 Central Avenue FL 1
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--
Patrick Sorsby, Esq.

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faegredrinker.com

William R. Horwitz
william.horwitz@faegredrinker.com
973-549-7142 direct

Faegre Drinker Biddle & Reath LLP
1177 Avenue of the Americas, 41st Floor
New York, New York 10036
+1 212 248 3140 main
+1 212 248 3141 fax

CONFIDENTIAL SETTLEMENT COMMUNICATION

December 31, 2020

VIA FEDEX DELIVERY

Patrick Sorsby, Esq. (sorsbylaw@gmail.com)
Law Office of Patrick Sorsby PLLC
1568 Central Avenue
Albany, New York 12205

**Re: Ernestine Welch v. BioReference Laboratories, Inc.
Civil Action No. 1:19-cv-00846 (BKS) (DJS)**

Dear Mr. Sorsby:

In connection with the settlement of the above-referenced case, enclosed is a "Bio-Reference Laboratories, Inc." check (Check No. 113023) in the total gross amount of four thousand dollars (\$4,000) payable to "The Law Office of Patrick Sorsby PLLC." Also enclosed is the pay stub associated with that check. As you requested, I have sent Ms. Welch's settlement payment directly to her.

Best wishes for the New Year.

Very truly yours,

WILLIAM R. HORWITZ

Enclosure